

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

OTIS ELEVATOR COMPANY  
Plaintiff,

v.

LOCAL 4, INTERNATIONAL UNION  
OF ELEVATOR CONSTRUCTORS; et al.  
Defendants.

Case No. 04CV12493RGS

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR EXPEDITED DISCOVERY**

Now come the Defendants Michael Langer, Kevin McGettigan and Steve Morse in their individual and official capacities and Local 4, International Union of Elevator Constructors (collectively referred to as "Union Defendants") state their opposition to Plaintiff's motion for expedited discovery. The grounds for their Opposition follow:

1. Plaintiffs have failed to set forth adequate grounds to warrant expedited discovery.  
First, the allegation that Local 4 "engaged in an unlawful work stoppage over the Thanksgiving weekend" fails, without more, to justify the motion. Plaintiff has failed to allege and, upon information and belief, to obtain service of the Temporary Restraining Order. Second, even if the allegation were substantiated violation of a TRO does not give rise to a right to expedited discovery.
2. The Rules of Civil Procedure provide that a rule 26(f) conference normally precede discovery. For good cause shown, a party may obtain an order granting a departure from the normal discovery procedures. Qwest Communications v. Worldquest

Networks, 213 F.R.D. 418 (D. Colo. 2003); Semitool, Inc. v. Tokyo Electron America, 208 F.R.D. 273 (NDCal. 2002). Plaintiff's motion fails to establish good cause shown.

3. In Notaro v. Koch, 95 F.R.D. 403 (SDNY 1982) Judge Edelstein required a plaintiff seeking expedited discovery to show 1) irreparable harm; 2) some probability of success on the merits; 3) some connection between the expedited discovery and the avoidance of irreparable injury and 4) some evidence that that the injury that will result without expedited discovery looms greater than the injury that the defendant will suffer if expedited relief is granted.
4. Under either test, plaintiff's motion for expedited discovery should fail.

**WHEREFORE** the Union Defendants oppose the Plaintiff's motion for expedited discovery.

Respectfully submitted,

**LOCAL 4, INTERNATIONAL UNION  
OF ELEVATOR CONSTRUCTORS, ET AL.**  
by its attorneys,

A large, stylized handwritten signature in black ink, appearing to read "P.F. Kelly".

Paul F. Kelly, Esq.

BBO #267000

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